

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 27 1975

Dear Mr. Chairman:

This responds to the request, at a hearing held by the Subcommittee on Public Lands on October 9, 1974, for a Departmental review of issues concerning water and wilderness proposals.

As a general rule, the inclusion of water in a wilderness area would bar the use of motorboats (section 4(c) of the Wilderness Act of 1964). The Congress could, of course, provide otherwise in legislation establishing a wilderness, as in the case of Okefenokee National Wildlife Refuge, Georgia (see infra).

Moreover, section 4(c) of the Act contains two provisions which in limited circumstances would permit the use of motorboats in wilderness. That subsection provides in part that, "subject to existing private rights, there shall be no commercial enterprise...within any wilderness area designated by this Act." For example, under this section if a body of water upon which there is a motorboat concession is included in a designated wilderness area, the Department would presumably be required to permit the motorboat use to continue until the contract has run its course (unless, of course, Congress directed that the contract be terminated). Subsection 4(c) also admits of the following exceptions to its generalized prohibition of motorboats in wilderness: "except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no...use of...motorboats...within any wilderness area." Situations may arise where motorboats would be necessary to deal with health and safety matters or even to meet minimum administrative requirements for an area: the subsection appears to authorize such uses.

In addition to these exceptions, section 4(d)(1) of the Act can be read to provide discretion for the Secretary of the Interior to permit

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continued motorboat use within wilderness areas where such a use has "already become established." In order to reach this result, one must deal with the fact that as written section 4(d)(1) applies only to the Secretary of Agriculture. However, this Department has been recommending that language such as the following be incorporated into wilderness legislation: "Any reference in the Wilderness Act to the Secretary of Agriculture shall, where appropriate, be deemed to be a reference to the Secretary of the Interior." The Congress has generally added this or similar language in enacting wilderness legislation.

As noted, the authority to permit continued motorboat use is discretionary--the use "may be permitted to continue subject to such restrictions as the Secretary of the Interior deems desirable." In exercising that discretion, we would generally recommend to the Congress that, in a situation where motorboat use is a prerequisite for access to a wilderness area or to the "parent" park or refuge, the waters affording such access be omitted from the wilderness area. Our reasoning would be that there is a basic incompatibility between motorized equipment and wilderness (one of the primary purposes of the Wilderness Act is to provide "outstanding opportunities for solitude or a primitive and unconfined type of recreation") and that exceptions to the spirit of the Act--whether by exercise of administrative discretion pursuant to section 4(d)(1) or by specific statutory provision--ought to be kept to a minimum.

One possible exception to this line of reasoning would arise if we had a situation where for some reason the need for motorboat use on certain waters were likely to be obviated. In such a case, the incompatibility of motorboat use with wilderness status would be only short-term, and we might well recommend that the water be included in the wilderness area.

An example will help to make the guidelines I have been discussing more concrete. In fashioning the Crater Lake National Park wilderness proposal, we declined to recommend the lake itself for wilderness designation. . Crater Lake is both the source of the park's name and its raison d'etre. Thus, interpretation of the lake to the public is, in our view, an essential aspect of enjoyment of the park. It is also our judgment that such interpretation requires motorboat use. At present this use involves four 60-passenger motorcraft which take the public on sight-seeing tours of the lake and Wizzard Island. This use also entails support facilities--

two boathouses; docks and a comfort station on Wizzard Island; a snack bar, comfort station, docking and fueling facilities at Cleetwood Cave, where the tour originates.

As outlined above, the Wilderness Act contains more than one provision upon which designation of Crater Lake with motorboat usage could be based. We have argued against such designation, however, because we believe that the continuing presence of motorboats on the lake is incompatible with the meaning of wilderness. Since "outstanding opportunities for solitude and a primitive and unconfined type of recreation" are not now--and will not be in the foreseeable future--present at Crater Lake, we see no rational purpose to be served by calling it wilderness. And on the contrary, we perceive a debasement of the concept and the reality of wilderness if Crater Lake is included in the system.

One specific question which has been asked frequently at wilderness hearings is how we justify recommending submerged lands for wilderness designation without the water column above them. The extent to which the Department controls water columns bordering on its parks and refuges varies according to the statute or Executive Order which established the area. In cases where the Department controls the water column as well as submerged lands beneath it, we have generally tried not to separate the two in formulating wilderness proposals. In cases where we have control over submerged lands only, we have often recommended wilderness designation of these lands, even though it is entirely possible that activities could occur in the overlying water that are both beyond our control and incompatible with the solitude expected of a wilderness area. We believe that designation in such cases can be useful, however, as an added protection of the submerged lands.

In the remainder of this letter, I would like to discuss specific examples of areas where water has been prominently involved in wilderness proposals. In both Glacier Bay National Monument and Everglades National Park, water areas have been left out of the wilderness proposals. Like Crater Lake, Everglades is a national park in which water is a central attraction. There is simply no practical way of seeing the park except via motorboats. Because this situation is permanent, we have not recommended to Congress that the water routes of Everglades National Park be included in the wilderness. Despite its name, Glacier Bay National Monument is not as dependent on water for its attractiveness as are Crater Lake or Everglades. However, we have omitted the bay itself from the wilderness proposal because it is a source of access both to the monument and to commercial fishing activities: i.e., in addition to serving as the

"gateway" to the monument, the bay is a part of the local traffic patterns. Again, these are circumstances which are not likely to change; thus, rather than make a permanent exception for motorboat use, we have deleted the bay from the proposal.

With regard to refuge wilderness areas, it should be mentioned at the outset that the Congress has, by specific statutory provision, authorized the continued use of motorboats in the wilderness segment of Okefenokee National Wildlife Refuge, Georgia (P.L. 93-429). As to two other refuge proposals, the Department does not have jurisdiction over certain waters within the refuge boundaries and thus could not recommend these waters for inclusion in wilderness: these are Semidi National Wildlife Refuge, Alaska, and Chasachowitzka National Wildlife Refuge, Florida. Access to Simonof National Wildlife Refuge, Alaska depends on motorboat use on waters within the refuge boundaries; since this is a condition which is not likely to change, we have not recommended the waters involved for wilderness designation. Waters within J. N. "Ding" Darling National Wildlife Refuge, Florida are subject to motorboat use by commercial fishing operations; since, again, this is likely to be a long-term situation, we have not recommended the waters for wilderness designation.

In three additional proposed wilderness areas--Parker River National Wildlife Refuge, Massachusetts; Cape Romain National Wildlife Refuge, South Carolina; and Assateague Island National Seashore--Chincoteague National Wildlife Refuge, Virginia and Maryland--the Department lacks jurisdiction over certain waters and thus could not recommend their inclusion in the proposals. As to all three areas, however, there is a special circumstance which warrants discussion. The proposals all extend in some areas to the mean low tide mark; water at this mark is navigable at high tide but not at other times. Since we lack jurisdiction over the water, we cannot bar motorboat use at high tides. Nonetheless, we believe that the lands extending to the low-tide mark should in all three cases be included in the proposals to obtain the supplementary protection which wilderness status entails.

We appreciate the opportunity to articulate this aspect of our wilderness policy. If there are additional questions, we would be pleased to provide further replies.

Sincerely yours,

(Sgd) Douglas R. Wheeler

Acting Assistant Secretary of the Interior

Honorable Henry M. Jackson
Chairman, Committee on Interior
and Insular Affairs
United States Senate
Washington, D. C. 20510

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